

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

W. GLENN HOGAN

COMPLAINANT

v.

SPANISH COVE SANITATION

DEFENDANT

CASE NO. 94-346

O R D E R

Complainant has moved to amend his complaint to substitute the real party in interest as the Complainant. Contending that Complainant lacks standing to bring his complaint, Defendant has moved to dismiss the complaint. Finding that substitution of the Complainant will not unduly prejudice the Defendant, the Commission grants Complainant's motion to amend and denies Defendant's motion to dismiss.

Spanish Cove Sanitation is a sewer utility which provides service to 228 customers in southern Jefferson County, Kentucky. B. Klean II, Inc. ("B. Klean II") owns a laundromat which is located at 5402 Delmaria Way and which Spanish Cove Sanitation serves. Glenn Hogan is B. Klean II's president and a principal shareholder.

On August 31, 1994, Hogan filed a formal complaint against Spanish Cove Sanitation in which he alleged that the utility is charging 5402 Delmaria Way a rate which is higher than its filed

rate. In its answer, Spanish Cove Sanitation admitted charging a rate which differed from its filed rates but denied that Hogan was a customer. At the hearing on the complaint, Hogan moved to amend his complaint to substitute B. Klean II for Hogan as Plaintiff. Hogan stated that the complaint was filed on B. Klean II's behalf and in his capacity as its president. Responding to the motion, Spanish Cove Sanitation moved to dismiss the complaint for lack of standing.

The Complainant lacks a direct financial interest in the matter of which he complains. He is not a customer of the utility, receives no service from it, and is not liable for any charges which it assesses. Therefore, he has no direct financial interest in the utility's rates nor any right to a refund for overcharges.

The lack of a direct financial interest, however, does not render the complaint defective nor require its dismissal. KRS 278.260(1), which governs complaints to the Commission, does not require that a party have a direct financial interest in the subject matter of the complaint. It states:

The commission shall have original jurisdiction over complaints as to rates or service of any utility, and upon a complaint in writing made against any utility by any person that any rate in which the complainant is directly interested is unreasonable or unjustly discriminatory, or that any regulation, measurement, practice or act affecting or relating to the service of the utility or any service in connection therewith is unreasonable, unsafe, insufficient or unjustly discriminatory, or that any service is inadequate or cannot be obtained, the commission shall proceed, with or without notice, to make such investigation as it deems necessary or convenient. The commission may also make such an investigation on its own motion.

KRS 278.260(1) requires the Commission to investigate any written complaint from an interested party, but permits investigation of other complaints regardless of source.

In Power Development Systems, Inc. v. Kentucky Utilities Co., Case No. 9456 (Ky. P.S.C. Feb. 26, 1986), Kentucky Utilities Company moved to dismiss a complaint on the grounds that the Complainant was not a customer and therefore lacked standing to challenge a utility rate. Denying the motion, the Commission held that KRS 278.260 "does not require that complaints be made only by customers. . . . [E]ven if its [the complainant's] interest were not so direct the Commission could investigate this matter on its own motion." Id. at 2.

As to Complainant's motion, a change of Plaintiffs by the substitution of new persons in the place of those who originally brought suit is generally not permitted. 59 Am. Jur. 2d Parties § 210 (1987). Substitution of parties is permitted, however, where there is no change in the cause of action and the parties substituted bear some relation of interest to the original parties. See, e.g., McBride v. Moss, Ky. 437 S.W.2d 726, 729 (quoting Fierstein v. Piper Aircraft Corp., 79 F.Supp. 217 (D.C.Pa.) ("[T]he spirit of present day court procedure is 'to settle controversies upon their merits rather than to dismiss actions on technical grounds, to permit amendments liberally, and to avoid if possible depriving a litigant of a chance to bring his case to trial.'"))

As the complaint clearly identifies the matters in dispute and the party to be substituted bears some relation to the Complainant,

the utility suffers no prejudice. The Commission finds that Complainant's motion should be granted.

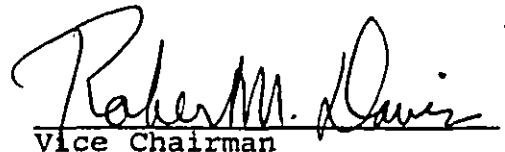
IT IS THEREFORE ORDERED that:

1. Complainant's motion to amend his complaint is granted.
2. Defendant's motion to dismiss is denied.
3. B. Klean II, Inc. is substituted as the Complainant in this proceeding.
4. The style of this case shall henceforth be "B. Klean II, Inc. v. Spanish Cove Sanitation."
5. A hearing in this matter shall be held on March 9, 1995, at 9:30 a.m., Eastern Standard Time, in Hearing Room 1 of the Commission's offices at 730 Schenkel Lane, Frankfort, Kentucky.
6. Each party shall, within 20 days of the date of this Order, submit to the Commission a list of witnesses which it expects to call and a written summary of the expected testimony.

Done at Frankfort, Kentucky, this 10th day of February, 1995.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman

ATTEST:


Executive Director


Commissioner